

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3882 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JJ SHRIMALI

Versus

CHEIF OFFICER.

Appearance:

MR SHIVANG SHUKLA FOR MR YN OZA for Petitioner
MS MANISHA LAVKUMAR for Respondent No.2
MR VC DESAI for Respondent No.1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/08/2000

ORAL JUDGEMENT

#. This is a wholly misconceived writ petition at the instance of petitioner who claims himself to be Convener of Shri Jan Jagruti Utkarsh Unnati Mandal. In the petition, the petitioner prayed for the following

reliefs:

(a) be pleased to admit this petition;

(b) be pleased to issue a writ of Mandamus or certiorari or any other appropriate writ, order or direction in the nature of mandamus or certiorari directing the respondent authority from carrying out further demolition of huts situated on the plot of Rajmahal compound and nearby Harijan Kanya Chhatralay at Mehsana and further direct the respondent authority to construct the houses on the said plot for hutment dwellers;

(c) pending admission, hearing and final disposal of this petition, be pleased to restrain the respondent authority from carrying out further demolition of huts situated on the plot of Rajmahal compound and nearby Harijan Kanya Chhatralay at Mehsana and direct the respondent authority to construct the houses on the said plot for hutment dwellers.

#. The matter was admitted on 5.8.87 and interim relief has been granted whereunder the respondents were directed to maintain status-quo as on that date. This petition has been filed in the court on 4.8.87.

#. The learned counsel for the petitioner contended that it is a writ petition filed by petitioner in representative capacity for espousing the cause of poor hutment dwellers who are staying at the site for more than 40 years and they were sought to be removed therefrom for the purpose of construction of approach road for the officers of Mehsana District to visit Vanikar Club which is meant for entertainment of officers. It is further stated by petitioner that for this club, the Government of India has made a grant of Rs.1 lac. In case this approach road is not constructed, the possibility of the grant being lapsed would have been there and that is the reason that expeditiously, action has been taken for construction of this road and in furtherance thereof to remove the hutments. The petitioner stated that hutment dwellers are staying on the land in dispute for 30 to 40 years. They are paying taxes to the municipality. They are paying electricity charges to the Gujarat Electricity Board. They are having ration cards also and even if they have to be removed from the place, due process of law has to be followed and they should have been given alternative

accommodation. Reference has also been made to the provisions of section 233 of the Gujarat Municipalities Act, 1963.

#. The respondent No.2 has not filed any reply to the special civil application and this fact is admitted by learned counsel appearing for this respondent. However, the respondent No.1 filed reply to the special civil application and the claim of the petitioner made in the special civil application has been contested. It is stated in the reply that the tenders for construction of road were invited by an advertisement in "Gujarat Samachar", dated 20th September, 1986 and these tenders were accepted on 27.11.86 and work order has also been given. The hutments were removed from the land in question and thereafter road has been constructed. The date of removal of hutments has been given by respondent No.1 in the reply, i.e. on 17th June 1987. It has next been stated that the hutment dwellers have no right, title or interest whatsoever in the land, they are rank trespassers and the respondent No.1 has all right to remove this encroachment for which even a notice or opportunity of hearing is not necessary to be given to them. Rejoinder to the reply has not been filed by petitioners though a copy of the same was given to the petitioner in the year 1987. the averments made by respondent No.1 in the reply to the special civil application stand uncontroverted and the same are to be taken to be correct.

#. The learned counsel for the petitioner contended that the hutments could have been removed only after giving of notice and opportunity of hearing to the holders thereof and as it has not been done, the whole of the action is illegal. It has next been contended that the persons are there since last more than 30 to 40 years and for development purpose, if the land is necessary, then those persons should have been given alternative land or alternative residential accommodation.

#. Mr.Desai, learned counsel for respondent No.1 in contra contended that this petition is not filed by those hutment dwellers. This is a petition filed by the person who is not there on the land. Even in the special civil application, names of those persons who were occupying the lands have not been given out. Mr.Desai submits that individual persons whose alleged rights are affected have only cause and justification to approach this court but not the petitioner. Even it is not the case which can be said to be filed in representative capacity and no such permission has also been sought, what to say it has not

been granted by the court. It has next been contended that the hutments have been removed and the road has been constructed much before the filing of this petition by petitioner but this fact has not been disclosed, meaning thereby, material fact relevant to the controversy which has been raised by petitioner in this special civil application has conveniently been concealed. On merits Mr.Desai submits that the provisions of Section 223 of the Act are not applicable to the facts of this case. It is a provision which empowers municipality to evict the persons who were in lawful possession of the municipal premises. For removal of trespassers, this provision is not applicable.

#. Ms.Manisha Lavkumar, learned AGP for respondent No.2 contended that the petitioner has come up before this court for protection of those persons who are rank trespassers on the land in dispute. In her submission for removing of the encroachment from the land belonging to Government or municipality or Panchayats, the provisions of the Gujarat Public Premises (Eviction of Unauthorised Occupants), Act, 1972, are not required to be followed. Relying on the decision of the Apex Court in the case of Premji Ratansey Shah & Ors. v. Union of India & Ors. reported in 1995(5) SCC 547 and decision of Division Bench of this court in the case of Anupam Rekdi Cabin Association v. Jamnagar Municipal Corporation, reported in 1995(1) GLH 586, Ms.Manisha Lavkumar contended that even notice or opportunity of hearing to such category of persons before removal of encroachment needs not be given. She has also relied on another unreported decision of this court in Special Civil Application No.2559 of 1990 decided on 22.6.2000 (Coram: S.K.Keshote, J.)

#. I have given my thoughtful considerations to the rival contentions made by learned counsel for the parties.

#. The petitioner seems to be a busy persons and prima-facie, I am satisfied that in case it would have been really a bonafide petition for espousing the causes of those alleged poor persons, the hutment dwellers, he should have given out the names of those persons together with necessary details. He stated in the petition that there are about 100 to 110 families residing on the land in dispute but name of even not a single person has been mentioned. These facts are sufficient for the court to draw inference that it is not bonafide petition at the instance of the petitioner. The petitioner seems to be against the construction of road as it is a road which is

to be constructed for the convenience of the officers of Mehsana District to reach to the club which is meant for entertainment of the officers. Otherwise also, in such matters, a petition in representative capacity is difficult to appreciate now after enactment of The Legal Services Authorities Act, 1987. Earlier it is understandable that those persons, because of poverty or some other difficulties, may not be in a position to come up before this court but this class of persons are now entitled for free legal aid which is provided from the State Government and they could have come before this court. It is understandable that some other persons may help them in filing of the petitioner but in such matters, petitioners are to be filed in individual capacity. These are the matters where manifold questions of fact are to be gone into and every individual may have its own facts.

##. On merits, otherwise also, I do not find any case in favour of petitioner. Only on the basis of so-called municipal receipts, photographs, bill of G.E.B., ration card, it is difficult to accept the right, title or interest of those persons on the land. Merely by these photographs, even it is very difficult for the court to accept that what the petitioner is saying is correct. So far as municipal receipts are concerned, they are not legible and the counsel for the petitioner on being put by the court, is unable to give details therefrom. In the absence of any material to prove the right, title and interest of these persons or their legally occupying the land, the status of those persons is only that of rank trespassers and I find sufficient merits in the contention of learned counsel for respondent No.2 that for their removal from site, even notice or opportunity of hearing needs not to be given to them. This matter is squarely covered by decision of the Apex court in the case of Premji Ratansey Shah & Ors. v. Union of India & Ors. (supra).

##. I find sufficient merits in the contention of Mr.Desai, learned counsel for respondent No.1, that the petitioner has concealed very material and important fact from this court. Road has been constructed much before the petitioner approached to this court and this fact has to be disclosed by petitioner in the special civil application and concealment thereof is certainly very important and relevant which reflects the conduct of the petitioner and only on this ground, this petition deserves to be dismissed.

##. Now only remains last contention of the learned

counsel for the petitioner to be dealt with that those persons are to be allotted alternative site, it is suffice to say that in the petition, the petitioner prayed for direction to the respondent-authority to construct houses on the plot mentioned in the prayer for hutment dwellers. The learned counsel for the petitioner, on being put by the court, has failed to show any provision from the Municipalities Act or from any other Act whether it is a legal obligation on the State Government or the Municipality where rank trespassers are to be removed from the land in dispute, they have to be provided alternative accommodation or land or constructed houses. This court, under Article 226 of the Constitution of India, can only enforce legal and fundamental rights on the citizens. It is true that in many of the cases, sometimes, schemes are framed by the State Government for rehabilitation of such class of persons but it is for the State Government and this Court cannot give such direction as the petitioner has failed to make out any case of infringement of any of its legal and fundamental right.

##. As a result of aforesaid discussion, this special civil application fails and the same is dismissed. The petitioner is directed to pay Rs.5,000/= as costs of this petition, i.e. Rs.2,500/= to the municipality and Rs.2,500/= to the Collector, Mehsana.

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(sunil)